



**STATE OF MAINE
SUPREME JUDICIAL COURT
SITTING AS THE LAW COURT**

NOTICE OF INVITATION TO FILE AMICUS BRIEFS

**Law Court invites amicus briefs regarding
foreclosure when debtor is deceased,
time for probate has passed, and
property is owned by surviving joint tenant,
who is not liable on the note**

The Maine Supreme Judicial Court, sitting as the Law Court, invites briefs of amici curiae in the appeal of *Key Bank National Association v. Elizabeth Keniston, et al.*, Law Court docket number Pen-22-250. Key Bank appeals from an order dismissing its mortgage foreclosure complaint without prejudice because the debtor, an indispensable party, is not a party to the action. Specifically, the debtor on the underlying note died intestate in 2011, and more than three years have passed without any administration of the estate. The property was owned in a joint tenancy at the time; the surviving joint tenant had signed the mortgage but did not sign the note. After asking the probate court to determine the heirs, Key Bank named the heirs of the debtor as

defendants in the foreclosure action. The heirs, however, are not liable on the note and never owned any interest in the mortgaged property, which passed to the surviving joint tenant when the debtor died.

The Law Court held that the debtor is an indispensable party in *MTGLQ Investors, L.P. v. Alley*, 2017 ME 145, 166 A.3d 1002, and ordered that the complaint be dismissed where it named neither the debtor nor the debtor's estate. In somewhat similar circumstances, however, the U.S. District Court in Maine has determined that because Maine is a title theory state, a mortgage was enforceable even if the note was not. *Johnson-Toothaker v. Bayview Loan Servicing LLC*, 2022 U.S. Dist. LEXIS 143186.

The Court invites amicus briefs responsive to the following questions:

1. Under these circumstances, what enforceable interest, if any, does the mortgagee have in the subject property?
2. Is formal administration of an estate or appointment of a special administrator required in order to foreclose when the debtor is deceased?

The parties' briefs and the appendix are available on the Court's website at www.courts.maine.gov/quick/foreclosure.

An amicus brief may be filed by or on behalf of any individual, entity, or group of individuals and/or entities without separate leave of the Court. Any amicus brief must be filed on or before **February 23, 2023**. An amicus brief

must be filed at the address listed below and must comply with M.R. App. P. 7A. In addition to filing and serving the required number of copies, any amicus must send a copy of the brief electronically, as a single “native” or text-based .pdf file, to the Clerk of the Law Court at lawcourt.clerk@courts.maine.gov.

Dated: January 17, 2023

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